No. 93-1883

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

ELOISE ANDERSON, in her official capacity as Director of the California Department of Social Services and RUSSELL GOULD in his capacity as Director of the California Department of Finance,

Petitioners,

v.

VERNA EDWARDS, for herself and as Guardian Ad Litem for VERNAIS EDWARDS, PAMELA EDWARDS and ERICKA EDWARDS; BARBARA MOORE, for herself and as Guardian Ad Litem for REBIANA ROBI, DERRAL ROBI, DELISHA JAA, RAYLEISHA TAYLOR; and VANESSA HAMILTON for herself and as Guardian Ad Litem for JONNY WATSON, CLEO THOMAS, RICKY MCDONALD, JIMMY PASHELL, and STANLEY HAMILTON, on behalf of themselves and all others similarly situated,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI

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Petitioners, Eloise Anderson, successor in interest to John D. Healy, as Director of the California Department

of Social Services, and Russell Gould, successor in interest to Thomas Hayes, as Director of the California Department of Finance, (hereinafter, "petitioners") hereby respectfully submit this Supplemental Brief. This Supplemental Brief is filed in order to draw the Court's attention to a new case which was not available at the time of filing of the petition, and which is pertinent to the Court's decision whether a writ of certiorari should be granted in this matter.

Since the filing of California's Petition for Writ of Certiorari, the United States Court of Appeals for the Eighth Circuit, on August 23, 1994, issued its decision in *Wilkes v. Gomez*, ___ F.3d ___ (8th Cir. 1994) 1994 U.S. App. LEXIS 22750, reversing *Wilkes v. Steffen*, (D. Minn. 1993) 831 F.Supp. 723. In *Wilkes*, plaintiffs challenge a Minnesota administrative policy which implements the AFDC program and includes all children living with an adult caretaker relative in one AFDC budgeting unit even if the household contains children, the caretaker is not legally responsible to support under state law.[1] *Wilkes v. Gomez*, slip opin. at 4.[2] *Wilkes*, is therefore, the Eighth Circuit counterpart to the instant action, *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990) and *Bray v. Dowling* 25 F.3d 135 (2d Cir. 1994).

As in the instant case, the District Court in *Wilkes* invalidated the Minnesota non-sibling filing unit rule

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[1] For the purposes of these proceedings, petitioners have referred to this administrative policy as the "non-sibling filing unit rule."

[2] Citations and page references are to the slip opinion issued by the Eighth Circuit.

relying in part on the decision of *Beaton v. Thompson. Wilkes v. Steffen*, (D. Minn. 1993) 831 F.Supp. 723, 728-729. The Eighth Circuit expressly rejected *Beaton* as having any validity in resolving the question whether the non-sibling filing unit rule violates federal AFDC laws. *Wilkes v. Gomez*, at 11. Rather, the Eighth Circuit concurred with the Second Circuit's decision in *Bray*, holding that *Beaton* did not recognize or discuss the distinction between a single caretaker relative who is obligated to expend AFDC funds for the benefit of all the minor children in her household and a non-legally responsible individual who has no corresponding obligation. *Id.* at 11.

The Eighth Circuit gave substantial deference to the federal Health and Human Services' official position regarding the validity of the non-sibling filing unit rule. *Id.* at 8-10. The Court found HHS's construction of the availability principle faithful to the relevant regulations' plain language. The Court sustained the federal agency's position that the state's policy regarding the challenged rule governing assistance unit composition to be lawful.

Plaintiffs in *Wilkes*, like respondents in this action, urged the Court to find that the non-sibling filing unit rule violates the federal mandate requiring equitable treatment among all AFDC recipients. *See* 45 C.F.R. §§ 233.10(a)(1) and 233.20(a)(1). The Eighth Circuit rejected the argument that the non-sibling filing unit rule does not treat similarly situated AFDC families equitably. *Wilkes v. Gomez*, at 11-12. The Ninth Circuit's decision in this case and in *Beaton* to the contrary is simply wrong and should be overturned.

CONCLUSION

The split between the Ninth Circuit's decisions and those of the other circuits and state courts of last resort grows with each new decision rendered. This Court should grant California's Petition for Writ of Certiorari and resolve the validity of the non-sibling filing unit rule.

DATED: September 6, 1994

Respectfully submitted,

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